



**EXTENSION OF THE RTA PI SCHEME:  
PROPOSALS ON FIXED RECOVERABLE COSTS**

**RESPONSE OF THE CIVIL JUSTICE COUNCIL**

The Civil Justice Council (CJC) welcomes the opportunity to respond to the consultation in relation to the extension of the RTA PI scheme and proposals on fixed recoverable costs. It also welcomes the Secretary of State's decision to reconsider the implementation date of the extended scheme as this will afford both the Ministry to give more detailed consideration to the issues involved and afford affected businesses more time to plan and prepare effectively for change.

It is imperative that costs are effectively controlled in order to ensure genuine access to justice for both claimants and defendants. In that regard the CJC recognised the importance of Sir Rupert Jackson's recommendations for costs reform, not least his recommendations at Appendix 5b of the Final Costs Report. The CJC considers that, in the light of the detailed work and analysis carried out by Professor Fenn and others that informed those recommendations that a cautious approach should be taken to the figures set out in the Final Costs Report. In particular the CJC suggests that at the present time the most appropriate revision of those figures should be to update them in the light of any inflationary change since they were formulated.

Given the nature and extent of the various civil justice reforms which have been and are in the process of being implemented a full scale revision of the figures should perhaps best take place when the reforms have had time to work. In that way a proper revision to the figures can take place in, for instance, 2014 which could be based on evidence derived from, and a properly researched impact assessment of, costs from actual work done under the reformed regime. Such a revision could then properly take account of the costs of both simple, straightforward cases as well as more complex cases and as a consequence be reflective of more realistic levels of fixed recoverable

costs. Adopting this approach is in the CJC's view more likely to avoid, as far as possible, the prospect of limiting effective access to justice for accident victims due to the introduction of limiting the amount recoverable to the presently proposed figures.

In the CJC's view the fixed recoverable cost regime must accurately reflect the actual amount of work that is required in managing a personal injury claim. It believes however that the model adopted for such a regime should reflect the varying nature of those costs, rather than the lowest possible cost. The CJC is conscious that solicitors must comply with a number of regulatory guidelines when opening a file, and that it may be regarded as unrealistic to expect all the necessary work and negotiations to be carried out against a fixed fee limited to £500. The model adopted should take proper account of such factors as these.

Turning to the specific questions raised, the CJC makes the following points.

**Question 1) The proposed rates and the differential above and below £10k.**

A distinction between cases of below and above £10,000 is sensible and justified. The question whether liability has been admitted is however of equal importance. Furthermore, a Fast Track assessment of damages for over £10,000 could well be less complicated than a disputed industrial injury or tripping claim with limited quantum. A greater incentive for agreement on liability is recommended and might be achieved by a differential roughly similar to the 12.5-100% success fee mark up which currently applies in RTA cases. The effect would also be to create a greater incentive for not exiting the Portal.

It is also important to consider that many claims start out as relatively straightforward ones, often of low value. They however may become more complex as the claim progresses. As such the fee regime should provide for a larger margin, at the lower level, for adequate supervision by a more experienced lawyer should that become necessary.

In addition, the CJC notes that whilst there remains the potential to reduce the sums awarded to solicitors because of the abolition of referral fees, it does not automatically follow that a solicitors' firm's marketing costs will consequently be significantly

reduced. In order to maintain their profile in the market place, which is becoming increasingly competitive not least due to the changes effected by the Legal Services Act 2007, firms are likely to have to increase their marketing costs. This is likely to have an impact on their cost base and ought properly to be reflected in the sums recoverable.

**Question 2) The proposed differential between RTA and EL/PL FRC rates.**

The CJC reiterates the points made at the outset of this response. Its view is that an assessment is required of the impact of the proposed scheme before taking a final, properly evidence-based, decision on the differential between the two rates.

**Question 3) The proposed apportionment between Stages 1 and 2 above and below £10k, for both RTA and EL/PL**

The CJC reiterates the point it made in response to Question 1) above that the distinction between cases of below and above £10,000 is sensible and justified. In addition to the points made in that paragraph, it believes that further analysis should be undertaken in relation to time spent on cases exceeding £10,000 but less than £25,000.

**Question 4) The proposed rate for EL/PL claims at Stage 3.**

The CJC reiterates the point made earlier.

**Question 5) The interface between the proposed FRC arrangements within and outside the Protocols, particularly with regard to incentives for either side to exit.**

It is logical, first of all, that fixed costs outside the Protocols are dealt with at the same time as costs within it. The CJC anticipates that the proposals will create an increased costs incentive for defendant insurers to keep claims within the Protocols and may have an adverse effect on the general approach of parties to cases under the scheme. A significant differential between costs inside and outside the Protocol may lead to an increase in litigation, which would itself undermine the objectives of the proposals and wider civil reforms. This ought to be avoided.

Finally, in relation to the table at Annex B relating to fixed recoverable costs for claims outside the Protocols, the CJC is concerned that improper incentives should not be created which would lead to national firms simply issuing claims through their London offices in order to take advantage of more advantageous rates. Any fee uplift for London firms should be limited to those claims which can properly be characterised as London claims e.g., because it is where the accident took place, where a claim, if it proceeded to trial, would properly be heard

In summary, the aim of these changes is to limit recoverable costs, especially in routine cases, whilst at the same time ensuring that the work is handled by an appropriate level of fee earner. There is concern that the figures proposed for early disposal may not accomplish that objective. The CJC therefore submits that more detailed, evidence-based, research be carried out before the recoverable costs are finally derived and set.

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